HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.701 of 2007

Between:

The Singareni Collieries Company Ltd., represented by its Chairman & Managing Director, Kothagudem and another. … Appellants

And

G. Surender and others. … Respondents

:: J U D G M E N T ::

Counsel for the appellants : Ms. V. Uma Devi

5th September, 2007

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 9-3-2007, vide which the learned Single Judge quashed the policy contained in Resolution dated 8-12-1994 passed by the Board of Directors of the Singareni Collieries Company Ltd. (for short, 'the Company') in the matter of promotion of Under Managers and Assistant Managers and directed the management of the Company to either consider the promotion of the writ petitioner (respondent No.1 herein) from the date his juniors were promoted as Assistant Managers i.e. 27-12-1994 or decide their inter se seniority and then make promotions to the posts of Assistant Managers with effect from 27-12-1994.

Respondent No.1 joined the service of the Company in 1983 as Mining Graduate Trainee. He was promoted as Under Manager

on 14-4-1985 and as Senior Under Manager on 3-11-1993. He passed First Class Mine Managers' Competency Examination on 3-6-1994, but his case was not considered for promotion as Assistant Manager and his juniors were promoted with effect from 27-12-1994. He was promoted as Assistant Manager vide order dated 29-9-1995.

In August, 1996, respondent No.1 filed writ petition for grant of a declaration that Resolution dated 8-12-1994 passed by the Board of Directors of the Company for promotion to the posts of Assistant Manager and Under Manager by taking the date of examination as the criteria is arbitrary and illegal. He also prayed for issue of a direction to the management of the Company to revise the promotions made after 8-12-1994.

In the affidavit filed by him, respondent No.1 referred to the policy of promotion, which contemplated consideration of the cases of eligible persons for promotion as per their seniority and averred that the decision taken by the Board of Directors on 8-12-1994 to adopt the criteria of date of passing the qualifying examination is arbitrary, irrational and unjust. He further averred that although vacancies in the cadre of Assistant Managers were available in 1993 and 1994, but no promotion was made till December, 1994 in anticipation of the decision of the Board of Directors to revise the criteria for promotion and his candidature was ignored by applying the revised criteria.

In the counter filed on behalf of the appellants, it was pleaded that the management of the Company has the discretion to lay down policy for promotion of the employees and the Court cannot exercise the power of judicial review in such matters. It was then averred that 24 officers had passed First Class Mine Managers' Competency Examination in 1993, whereas the writ petitioner passed the examination on 3-6-1994. According to the management, those who had passed examination earlier were treated senior for the purpose of promotion to the post of Assistant Manager. In paragraph 5(c) of the affidavit of Sri E.V. Purushotham, Deputy General Manager

(Personnel), it was averred that the criteria of seniority-cum-merit was adopted by the Board in its meeting held on 13-5-1975 and promotions were made in accordance with that criteria till 1994. Sri Purushotham further averred that the change in policy was effected because earlier the number of qualified persons available for promotion to the posts of Under Managers and Assistant Managers was less than the number of vacancies, whereas in 1992 and 1993, the number of eligible candidates was more than the number of vacancies and this necessitated change in the criteria for promotion. For the sake of convenience, paragraph 5(c) of the counter affidavit is reproduced below:

> "**5(c)** In reply to the averments of the petitioner in paras-3, 4, 5 & 6, it is submitted that the background for adopting the criteria of taking into account the date of passing the qualifying examination for the purpose of promotion as Asst. Manager (E-3 grade) is that during the recession of Coal Industry, there arose a situation during later 1960s of many Under Managers passing the First Class Mine Managers' Certificate of Competency on different dates but being unable to get promotion to the post of Asst. Manager (E-3 grade) and thus, getting stagnated. However, with the recession coming to an end in 1970s and with the expansion of Coal Industry, almost all Under Mangers who were possessing I Class Mine Managers' Certificate of Competency got promoted to the post of Asst. Manager. The candidates who were promoted, however, represented to determine their inter-se seniority. The Board in its meeting held on 13-5-1975, had reiterated that the criteria for promotion should be seniority-cum-merit and all the qualified candidates as on the date of vacancy be considered for promotion, the seniority being determined on the basis of length of service put-in in the immediate preceding grade and not by the date of passing the qualifying examination. This was apparently in view of Degrees being conferred by different Universities independently to Director General of Mines Safety. The practice of promoting candidates obtaining I Class Certificate batch-wise each year based on Departmental Promotion Committee's recommendation continued till 1992 as the number of vacancies in the cadre of Asst. Manager (E-3 grade) were always excess than the number of candidates passing examinations. As a result of executive manpower requirement as approved by Board for all the disciplines, the number of vacancies in the cadre of Asst. manager are less in number compared to the number of candidates who passed I Class in the year 1993 and consideration of candidates for promoting to

the cadre of Asst. Managers and Under Managers was withheld pending High Power Committee's report. As the Director General of Mines Safety were pointing out violation stating that statutory personnel holding I Class Certificate were not sufficiently posted in the mines as per the stipulations required under Coal Mines Regulations and other notifications, 16 Senior Under Managers/Under Managers who passed I Class in the year 1992 were posted as per their inter-se seniority vide Office Order No.C49/989, dated 21-5-1993 to work against statutory vacancies of Asst. Managers in Mines. Another 19 Senior Under Managers/Under Managers who passed I Class in the year 1993 were also posted as per their inter-se seniority to work against statutory vacancies of Asst. Managers. Subsequently, the 16 vacancies in the cadre of Asst. Managers as projected by the High Power Committee were filled up from those Senior Under Managers and Under Managers who passed I Class in the year 1992 vide Office Orders No.C50/1373 and C50/1374, dated 2-7-1993. As the number of qualified candidates were fewer than the number of vacancies in view of the Director General of Mines Safety only conducting I Class Certificate Examinations, it was proposed to adopt the criterion of taking into account the date of passing qualifying examination for the purpose of promotion to the cadre of Asst. Manager (E3) thus giving weightage to the date of passing the statutory examination, which used to be the practice prevailing earlier to Board's decision in May, 1975 in order to reward the candidates who had qualified earlier. It is clear from the above that the present procedure of promotion was adopted so that the candidates who qualify earlier are rewarded by promoting them to the cadre of Asst. Manager as brought out in the paras supra, it is submitted that though some executives had passed I Class Examination in 1993, they were not considered for promotion to the cadre of Asst. Manager is in the case of officers of other disciplines in view of the High Power Committee Report being kept pending. But as the Director General of Mines Safety officials were pointing out violations, 19 Senior Under Managers/Under Managers who passed I Class in 1993 were posted to work against statutory vacancies of Asst. Managers in Mines as per their inter-se seniority in May, 1994. The petitioner is put to strict proof of promotions to the post of Asst. Manager not being effected during 1993 and 1994 as 126 Senior Under Managers/Under Managers who passed I Class in 1993 were promoted as Asst. Managers vide Office Order No.C5O/1374, dated 2-7-1993 as per their inter-se seniority."

The learned Single Judge referred to Resolution dated 8-12-1994 and held that the revised policy enshrined therein is totally

irrational, arbitrary and unjust. In the opinion of the learned Single Judge, the date of passing the qualifying examination cannot be made basis for determination of the seniority for the purpose of promotion to the higher post and all those who were eligible on the date of promotion were entitled to be considered as per their seniority. Accordingly, he quashed Resolution dated 8-12-1994 and issued directions, to which reference has been made hereinabove.

Ms. V. Uma Devi, learned counsel for the appellants argued that the revised policy framed by the Board of Directors of the Company was based on critical assessment of the fact-situation obtaining in the year 1994 and the revised criteria of making promotions to the post of Assistant Manager by taking into consideration the date of passing the qualifying examination cannot be treated as arbitrary or irrational. Learned counsel emphasised that even though the First Class Mine Managers' Competency Examination required to be passed by a candidate who aspires for promotion to the post of Assistant Manager is not a competitive examination, the criteria evolved by the Board for promoting persons who passed the examination prior in point of time cannot be dubbed as arbitrary or discriminatory. She further argued that the learned Single Judge committed a serious error by entertaining the writ petition filed after one year and six months of the promotions effected vide order dated 27-12-1994. Ms. Uma Devi then argued that by having accepted the promotion accorded to him in September, 1995, respondent No.1 will be deemed to have waived his right to challenge the policy framed by the Company and the learned Single Judge should have dismissed the writ petition at the threshold.

We have thoughtfully considered the argument of the learned counsel, but have not felt convinced. A reading of Resolution dated 8-12-1994 makes it clear that the criteria evolved by the Company for promotion to the post of Assistant Manager was seniority-cum-merit and all those who were qualified on the date of consideration were accorded promotion as per the criteria of seniority-

cum-merit. For this purpose, seniority based on the length of service in the lower cadre/grade was taken into consideration. In the meeting held on 13-5-1975, the Board of Directors turned down the suggestion that the date of passing the qualifying examination should be made the criteria for promotion and reiterated that promotion should be made on the basis of seniority-cum-merit from among the eligible and qualified persons. This decision was in consonance with the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India. The revised criteria framed by the Board of Directors of the Company for making promotion by taking into consideration the date of passing the qualifying examination irrespective of the fact that on the date of actual promotion, persons senior in the lower grade/cadre had also passed such examination was per se irrational, arbitrary and discriminatory. It sounds extremely illogical that even though a senior person fulfils the conditions of eligibility, persons junior to him should be promoted because they had passed the qualifying examination on an earlier date. In our considered view, the revised criteria evolved by the Board was totally arbitrary and violative of Articles 14 and 16 of the Constitution and the learned Single Judge did not commit any error by striking down the same.

The facts of the present case show that respondent No.1 had passed the qualifying examination in 1994 and as on the date of promotion i.e. 27-12-1994, he was having the requisite qualifications. Therefore, there was no valid reason or justification to supersede him only on the ground that those who passed the qualifying examination prior

in point of time were available. It would have been a different thing if the vacancies had been filled by the management of the Company in 1993. In that event, senior among the qualified candidates would have been entitled to be promoted. However, the fact of the matter is that promotions were not made in 1993 and the revised criteria adopted vide Resolution dated 8-12-1994 was made applicable to facilitate

promotion of persons junior to respondent No.1.

It is neither the pleaded case of the appellants nor Ms. V. Uma Devi argued that as on 27-12-1994, respondent No.1 did not fulfil the conditions of eligibility for promotion. Therefore, there was no rhyme or reason to ignore his candidature and promote persons junior to him in the lower cadre.

The argument of Ms. V. Uma Devi that the writ petition should have been dismissed by the learned Single Judge on the ground of delay and laches is without substance. In the first place, it is to be noted that no such argument was advanced before the learned Single Judge. Therefore, the appellants will be deemed to have waived their objection to the maintainability of the writ petition on the grounds of delay and laches. Moreover, the delay of one year and six months cannot be treated fatal to the challenge of respondent No.1 to the revised criteria adopted by the Board for promotion to the post of Assistant Manager because the rights of third parties were not affected.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.1414 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, C.J.

5th September, 2007

C.V. NAGARJUNA REDDY, J.

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